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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,991	08/08/2001	Rose Z. Wilde	WIL 2384.1	3602

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EXAMINER

DICUS, TAMRA

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,991

Applicant(s)

WILDE, ROSE Z.

Examiner

Tamra L. Dicus

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Restriction Requirement

The Applicant's argument over the I and III group to the finish and kit, respectively, is moot, as the Examiner agrees that they should be included in one group, and hence claims 1-4 and 8-11 are examined below.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant does not provide any generic description as to what is included in "crackle medium". Providing that Ralph Lauren and other companies make crackle medium does not provide one skilled in the art with making the claimed invention as no ingredients are listed as to what is comprised in "crackle medium".

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1774

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,409,276 to Martinelli et al. in view of USPN 4,317,847 to Batistelli, and USPN 4,046,934 to Gustafson.

5. Martinelli teaches a metal article having three- dimensional wood grain and stainable coating. Martinelli details a substrate of metal (surface) having an embossment to forms ridges and grooves in the metal simulating a wood grain pattern has a stainable translucent coating of an acrylic latex filler (latex wood filler) (meeting claim 3) to allow a pigmented primer to be seen underneath (equivalent to forms raised islands and domains separated by cracks or valleys revealing glimpses of the underlying base coat). Martinelli also describes a method for producing "crackled" antique finish using an acrylic resin emulsion being applied to a substrate as a first and third coating, where the second coating is a water soluble dye (crackle medium). See col. 1, lines 41-60, col. 2, lines 15-19 and 31-65, and Example 1. A decorative stain is applied over the translucent coating at col. 5, lines 1-9 but is not on the surface as claimed.

6. While Martinelli teaches the translucent coating is stainable e.g. capable of receiving stain, Martinelli does not teach a stain or latex paint on the surface. However, Batistelli teaches a process for producing simulated weathered antique wood appearing finish describing an opaque base coat of water-base latex paint applied to a surface is a conventional coating at col. 2, lines 1-5. Hence, it would have been obvious to one of ordinary skill in the art to modify the metal article to include stain or latex paint on the surface since Batistelli teaches water-base latex paint is a conventional base coating for a surface at col. 2, lines 1-7 to give a natural wood color. While Martinelli teaches it is known to provide a crackle medium, Martinelli does not teach it between the stain/latex paint and the latex wood filler. However, it would have been obvious to

Art Unit: 1774

one of ordinary skill in the art to modify the surface of Martinelli to include a crackle medium over a latex paint or stain since Martinelli teaches a water soluble dye second coating is adjacent to a crackle medium at col. 1, lines 41-60. When combined with the teachings of Batistelli on the water-base latex paint serving as the base coat at col. 2, lines 1-7, one would be motivated to provide a crackle medium between the water-base/soluble latex paint and the latex wood filler of Martinelli to provide a latex paint or stain adjacent to a crackle medium adjacent to a wood filler. Moreover, Gustafson teaches fibrous building elements having a cracked surface formed by water-base paint at col. 2, lines 28-29 and col. 1, lines 45-54 teaches a surface may appear crackled forming cracks to permit vapour to diffuse through a building element. Therefore, it would have been obvious to one of ordinary skill in the art to modify the metal of Martinelli to provide a crackled medium since Gustafson teaches crackled mediums are formed by water-based paint as cited above.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,409,276 to Martinelli et al. in view of USPN 4,317,847 to Batistelli, and USPN 4,046,934 to Gustafson, as applied above, and further in view of USPN 4,345,044 to Columbus et al.

8. Martinelli essentially teaches the claimed invention. While Martinelli teaches a latex wood filler, Martinelli does not teach the wood filler composition as recited in instant claim 4. However, Columbus teaches an acrylic wood filler where the composition comprises 6-14% acrylic resin, 3-10% talc, 3-65% fillers, and 13-35% water in the abstract. Hence, it would have been obvious to one of ordinary skill in the art to modify the metal of Martinelli to further include a wood filler comprised of resin, talc, fillers, and water since Columbus teaches the ingredients are essential for a wood filler composition in the abstract.

Art Unit: 1774

9. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,409,276 to Martinelli et al. in view of USPN 4,317,847 to Batistelli, and USPN 4,046,934 to Gustafson, as applied above, USPN 4,345,044 to Columbus et al. and further in view of USPN 6,217,336 to Matthews.

10. Martinelli essentially teaches the claimed invention, but does not teach a kit *per se* of claims 8-10. Matthews teaches a decorative painting apparatus and method in a kit for walls. The paint of Matthews has included acrylic paint along with paper and other ingredients in a kit for the users convenience at col. 5, lines 40-55 and col. 6, lines 5-30. Hence, it would have been obvious to one of ordinary skill in the art to modify the Martinelli ingredients to be provided in a box since Matthew teaches ingredients in a kit for convenience at col. 5, lines 40-55 and col. 6, lines 5-30.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. USPN 4,313,976 to Leach teaches a composition and process for coloring and preserving wood. USPN 3,994,843 to Hickey teaches a textured and cast polymeric composition and method. USPN 3,839,073 to Hill teaches an aesthetic wood product. USPN 4,017,493 to Ferment et al. teaches a textured polyurethane surface. USPN 6,110,317 to Sandor teaches decorative design method and products. USPN 4,430,367 to Lat teaches translucent stainable coating.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is (703) 305-3809. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

Art Unit: 1774

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703) 308-0449. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-8329 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Tamra L. Dicus
Examiner
Art Unit 1774

June 13, 2003

CYNTHIA H. KELLY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

